

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

WILKIE LEE MCCOY,

Plaintiff,

v.

No. 23-cv-0482-KG-JHR

BETTY JUDD, *et al*,

Respondents.

ORDER OF DISMISSAL

This matter is before the Court following Wilkie Lee McCoy's failure to prosecute his 28 U.S.C. § 2241 habeas corpus petition. (Doc. 1) (Petition). McCoy was incarcerated when the case was filed and is proceeding *pro se*. The Petition alleges Respondents failed to restore his good-time credits after a prison infraction was dismissed. The Court initially ordered an answer to the Petition. (Doc. 4). Thereafter, McCoy was released from custody. (Docs. 7, 8). By an Order entered November 2, 2023, the Court stayed the answer deadline and directed McCoy to provide a current address as required by D.N.M. LR-Civ. 83.6. (Doc. 10). The Order warned that the failure to timely comply may result in dismissal of this action without further notice.

McCoy did not update his address by the December 2, 2023 deadline. The Order was also returned as undeliverable. (Doc. 10). On December 7, 2023, Respondent Attorney General for the State of New Mexico (AG) filed a Motion to Dismiss for Failure to Prosecute. (Doc. 12). The AG served that motion on McCoy at his last known address. McCoy did not object to the motion within 14 days, as required by D.N.M. LR-Civ. 7.4. Accordingly, the Court will dismiss the Petition without prejudice under Fed. R. Civ. P. 41(b) "for failure to ... comply with [civil rules and] court orders." *Olsen v. Mapes*, 333 F.3d 1199, 1204 n. 3 (10th Cir. 2003). The Court will

also deny a certificate of appealability (COA) under Habeas Rule 11, as the failure to prosecute this case is not reasonably debatable. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (A COA must be denied in each habeas case unless “reasonable jurists” would debate the outcome); *DeAtley v. Williams*, 782 Fed. App’x 736, 737 (10th Cir. 2019) (declining to issue a COA after district court dismissed habeas petition under Rule 41).

IT IS ORDERED:

1. The AG’s Motion to Dismiss for Failure to Prosecute (Doc. 12) is granted.
2. Wilkie Lee McCoy’s Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (Doc. 1) is dismissed without prejudice.
3. A certificate of appealability is denied.
4. The Court will enter a separate judgment closing this civil case.


UNITED STATES DISTRICT JUDGE